

CFR Ch. 1 (10-1-93 Edition)

iations pertaining to treaties
executive agreements.

Executive agreements, as used in
tion, means Government-to-
ent agreements, including
nts with international organi-
to which the United States is a

deviation from the FAR re-
o comply with a treaty to
e United States is a party is
ed, unless the deviation would
nsistent with FAR coverage
a law enacted after the execu-
e treaty.

deviation from the FAR re-
o comply with an executive
nt is authorized unless the de-
would be inconsistent with
erage based on law.

copy of the text of any devi-
thorized under paragraphs (b)
this section shall be transmit-
e FAR Secretariat through a
agency control point.

deviation required to comply
treaty or an executive agree-
not authorized by paragraphs
of this section, then the re-
deviation shall be processed
the FAR Secretariat to the ap-
e council.

Part 1.5—Agency and Public Participation

50 FR 2269, Jan. 15, 1985, unless
noted.

solicitation of agency and public
s.

Definition.

ant revisions, as used in this
means revisions that alter the
tive meaning of any coverage in
R System having a significant
administrative impact on con-
or offerors, or a significant ef-
ond the internal operating pro-
of the issuing agency. This ex-
for example, does not include
stylistic, or other revisions
e no impact on the basic mean-
e coverage being revised.

Federal Acquisition Regulation**1.501-2 Opportunity for public comments.**

(a) Views of agencies and nongovern-
mental parties or organizations will be
considered in formulating acquisition
policies and procedures.

(b) The opportunity to submit writ-
ten comments on proposed significant
revisions shall be provided by placing a
notice in the FEDERAL REGISTER. Each
of these notices shall include—

(1) The text of the revision or, if it is
impracticable to publish the full text,
a summary of the proposal;

(2) The address and telephone number
of the individual from whom copies of
the revision, in full text, can be re-
quested and to whom comments there-
on should be addressed; and

(3) When 1.501-3(b) is applicable, a
statement that the revision is effective
on a temporary basis pending comple-
tion of the public comment period.

(c) A minimum of 30 days and, nor-
mally, at least 60 days will be given for
the receipt of comments.

1.501-3 Exceptions.

(a) Comments need not be solicited
when the proposed coverage does not
constitute a significant revision.

(b) Advance comments need not be
solicited when urgent and compelling
circumstances make solicitation of
comments impracticable prior to the
effective date of the coverage, such as
when a new statute must be imple-
mented in a relatively short period of
time. In such case, the coverage shall
be issued on a temporary basis and
shall provide for at least a 30 day pub-
lic comment period.

1.502 Unsolicited proposed revisions.

Consideration shall also be given to
unsolicited recommendations for revi-
sions that have been submitted in writ-
ing with sufficient data and rationale
to permit their evaluation.

1.503 Public meetings.

Public meetings may be appropriate
when a decision to adopt, amend, or de-
lete coverage is likely to benefit from
significant additional views and discus-
sion.

1.602-2

Subpart 1.6—Contracting Authority and Responsibilities**1.601 General.**

Authority and responsibility to con-
tract for authorized supplies and serv-
ices are vested in the agency head. The
agency head may establish contracting
activities and delegate to heads of such
contracting activities broad authority
to manage the agency's contracting
functions. Contracts may be entered
into and signed on behalf of the Gov-
ernment only by contracting officers.
In some agencies, a relatively small
number of high level officials are des-
ignated contracting officers solely by
virtue of their positions. Contracting
officers below the level of a head of a
contracting activity shall be selected
and appointed under 1.603.

1.602 Contracting officers.**1.602-1 Authority.**

(a) Contracting officers have author-
ity to enter into, administer, or termi-
nate contracts and make related deter-
minations and findings. Contracting of-
ficers may bind the Government only
to the extent of the authority dele-
gated to them. Contracting officers
shall receive from the appointing au-
thority (see 1.603-1) clear instructions
in writing regarding the limits of their
authority. Information on the limits of
the contracting officers' authority
shall be readily available to the public
and agency personnel.

(b) No contract shall be entered into
unless the contracting officer ensures
that all requirements of law, executive
orders, regulations, and all other appli-
cable procedures, including clearances
and approvals, have been met.

1.602-2 Responsibilities.

Contracting officers are responsible
for ensuring performance of all nec-
essary actions for effective contract-
ing, ensuring compliance with the
terms of the contract, and safeguarding
the interests of the United States in its
contractual relationships. In order to
perform these responsibilities, con-
tracting officers should be allowed
wide latitude to exercise business judg-
ment. Contracting officers shall—

1.602-3

(a) Ensure that the requirements of 1.602-1(b) have been met, and that sufficient funds are available for obligation;

(b) Ensure that contractors receive impartial, fair, and equitable treatment; and

(c) Request and consider the advice of specialists in audit, law, engineering, transportation, and other fields, as appropriate.

1.602-3 Ratification of unauthorized commitments.**(a) Definitions.**

Ratification, as used in this subsection, means the act of approving an unauthorized commitment by an official who has the authority to do so.

Unauthorized commitment, as used in this subsection, means an agreement that is not binding solely because the Government representative who made it lacked the authority to enter into that agreement on behalf of the Government.

(b) *Policy.* (1) Agencies should take positive action to preclude, to the maximum extent possible, the need for ratification actions. Although procedures are provided in this section for use in those cases where the ratification of an unauthorized commitment is necessary, these procedures may not be used in a manner that encourages such commitments being made by Government personnel.

(2) Subject to the limitations in paragraph (c) of this subsection, the head of the contracting activity, unless a higher level official is designated by the agency, may ratify an unauthorized commitment.

(3) The ratification authority in subparagraph (b)(2) of this subsection may be delegated in accordance with agency procedures, but in no case shall the authority be delegated below the level of chief of the contracting office.

(4) Agencies should process unauthorized commitments using the ratification authority of this subsection instead of referring such actions to the General Accounting Office for resolution. (See 1.602-3(d).)

(5) Unauthorized commitments that would involve claims subject to resolution under the Contract Disputes Act of 1978 should be processed in accordance

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with subpart 33.2, Disputes and Appeals.

(c) *Limitations.* The authority in subparagraph (b)(2) of this subsection may be exercised only when—

(1) Supplies or services have been provided to and accepted by the Government, or the Government otherwise has obtained or will obtain a benefit resulting from performance of the unauthorized commitment;

(2) The ratifying official could have granted authority to enter or could have entered into a contractual commitment at the time it was made and still has the authority to do so;

(3) The resulting contract would otherwise have been proper if made by an appropriate contracting officer;

(4) The contracting officer reviewing the unauthorized commitment determines the price to be fair and reasonable;

(5) The contracting officer recommends payment and legal counsel concurs in the recommendation, unless agency procedures expressly do not require such concurrence;

(6) Funds are available and were available at the time the unauthorized commitment was made; and

(7) The ratification is in accordance with any other limitations prescribed under agency procedures.

(d) *Nonratifiable commitments.* Cases that are not ratifiable under this subsection may be subject to resolution as recommended by the General Accounting Office under its claim procedure (GAO Policy and Procedures Manual for Guidance of Federal Agencies, Title 4, Chapter 2), or as authorized by FAR part 50. Legal advice should be obtained in these cases.

[53 FR 3689, Feb. 8, 1988]

1.603 Selection, appointment, and termination of appointment.**1.603-1 General.**

Consistent with 1.301(c), the agency shall establish a system for the selection, appointment, and termination of appointment of contracting officers. Agency heads or their designees may select and appoint contracting officers and terminate their appointments.

Federal Acquisition Regulation**1.603-2 Selection.**

In selecting contracting officers, the appointing official shall consider the complexity and dollar value of acquisitions to be assigned and the candidate's experience, training, education, business acumen, character, and reputation. Selection criteria include—

(a) Experience in Government contracting and administrative purchasing, or related fields;

(b) Education or special business administration, law, engineering, or related fields;

(c) Knowledge of acquisition and procedures, including other applicable regulations;

(d) Specialized knowledge in a particular assigned field of work; and

(e) Satisfactory completion of selection training courses.

1.603-3 Appointment.

Contracting officers shall be appointed in writing on a "Certificate of Appointment," SF 1402, stating any limitation on the authority to be exercised, other than those contained in applicable regulations. Appointing officials shall maintain files containing Certificates of Appointment that have not been terminated.

1.603-4 Termination.

Termination of a contract appointment will be by the agency on the Certificate of Appointment. The Certificate contains other provisions for termination. Terminations may be for reasons such as reassignment, change of employment, or poor performance. No termination operates retroactively.

Subpart 1.7—Determining Findings

SOURCE: 50 FR 1726, Jan. 11, 1985, and 50 FR 52429, Dec. 11, 1985, unless otherwise noted.

1.700 Scope of subpart.

This subpart prescribes policies and procedures for the terminations and findings and requirements for specific types

32.703-2

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of interest shall be extended to a time that is fair and reasonable under the particular circumstances.

32.616 Compromise actions.

For debts under \$100,000, excluding interest, if further collection is not practicable or would cost more than the amount of recovery, the agency may compromise the debt or terminate or suspend further collection action. Compromise is authorized by the Federal Claims Collection Act of 1966 (31 U.S.C. 3711). Compromise actions shall conform to Federal claims collection standards (4 CFR 101-105), and agency regulations.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986; 56 FR 29128, June 25, 1991]

32.617 Contract clause.

(a) The contracting officer shall insert the clause at 52.232-17, Interest, in solicitations and contracts, unless it is contemplated that the contract will be in one or more of the following categories:

- (1) Small purchases.
 - (2) Contracts with Government agencies.
 - (3) Contracts with a State or local government or instrumentality.
 - (4) Contracts with a foreign government or instrumentality.
 - (5) Contracts without any provision for profit or fee with a nonprofit organization.
 - (6) Contracts described in subpart 5.5, Paid advertisements.
 - (7) Any other exceptions authorized under agency procedures.
- (b) The contracting officer may insert the clause at 52.232-17, Interest, in solicitations and contracts when it is contemplated that the contract will be in any of the categories specified in 32.617(a).

Subpart 32.7—Contract Funding**32.700 Scope of subpart.**

This subpart (a) describes basic requirements for contract funding and (b) prescribes procedures for using limitation of cost or limitation of funds clauses. Detailed acquisition funding requirements are contained in agency fiscal regulations.

32.701 [Reserved]**32.702 Policy.**

No officer or employee of the Government may create or authorize an obligation in excess of the funds available, or in advance of appropriations (Anti-Deficiency Act, 31 U.S.C. 1341), unless otherwise authorized by law. Before executing any contract, the contracting officer shall (a) obtain written assurance from responsible fiscal authority that adequate funds are available or (b) expressly condition the contract upon availability of funds in accordance with 32.703-2.

[48 FR 42328, Sept. 19, 1983, as amended at 51 FR 2665, Jan. 17, 1986]

32.703 Contract funding requirements.**32.703-1 General.**

(a) If the contract is fully funded, funds are obligated to cover the price or target price of a fixed-price contract or the estimated cost and any fee of a cost-reimbursement contract.

(b) If the contract is incrementally funded, funds are obligated to cover the amount allotted and any corresponding increment of fee.

32.703-2 Contracts conditioned upon availability of funds.

(a) *Fiscal year contracts.* The contracting officer may initiate a contracting action properly chargeable to funds of the new fiscal year before these funds are available; *provided*, that the contract includes the clause at 52.232-18, Availability of Funds (see 32.705-1(a)). This authority may be used only for operation and maintenance and continuing services (e.g., rentals, utilities, and supply items not financed by stock funds) (1) necessary for normal operations and (2) for which Congress previously had consistently appropriated funds, unless specific statutory authority exists permitting applicability to other requirements.

(b) *Indefinite-quantity or requirements contracts.* A one-year indefinite-quantity or requirements contract for services that is funded by annual appropriations may extend beyond the fiscal year in which it begins; *provided*, that (1) any specified minimum quantities are certain to be ordered in the initial

43.103**43.103 Types of contract modifications.**

Contract modifications are of the following types:

(a) *Bilateral*. A bilateral modification (supplemental agreement) is a contract modification that is signed by the contractor and the contracting officer. Bilateral modifications are used to—

(1) Make negotiated equitable adjustments resulting from the issuance of a change order;

(2) Definitize letter contracts; and

(3) Reflect other agreements of the parties modifying the terms of contracts.

(b) *Unilateral*. A unilateral modification is a contract modification that is signed only by the contracting officer. Unilateral modifications are used, for example, to—

(1) Make administrative changes;

(2) Issue change orders;

(3) Make changes authorized by clauses other than a changes clause (e.g., Property clause, Options clause, Suspension of Work clause, etc.); and

(4) Issue termination notices.

43.104 Notification of contract changes.

(a) When a contractor considers that the Government has effected or may effect a change in the contract that has not been identified as such in writing and signed by the contracting officer, it is necessary that the contractor notify the Government in writing as soon as possible. This will permit the Government to evaluate the alleged change and (1) confirm that it is a change, direct the mode of further performance, and plan for its funding; (2) countermand the alleged change; or (3) notify the contractor that no change is considered to have occurred.

(b) The clause at 52.243-7, Notification of Changes, which is prescribed in 43.107, (1) incorporates the policy expressed in paragraph (a) above; (2) requires the contractor to notify the Government promptly of any Government conduct that the contractor considers a change to the contract, and (3) specifies the responsibilities of the contractor and the Government with respect to such notifications.

[48 FR 42386, Sept. 19, 1983, as amended at 56 FR 41744, Aug. 22, 1991]

48 CFR Ch. 1 (10-1-93 Ed.)**43.105 Availability of funds.**

(a) The contracting officer shall execute a contract modification causes or will cause an increase in funds without having first obtained certification of fund availability, except for modifications to contracts that—

(1) Are conditioned on availability of funds (see 32.703-2); or

(2) Contain a limitation of cost funds clause (see 32.704).

(b) The certification required in paragraph (a) above shall be based on the negotiated price, except that modifications executed before agreement on price may be based on the best available estimate of cost.

43.106 Procurement integrity—modifications.

No modification over \$100,000 as defined at 3.104-4(e) may be executed without complying with the requirements of 3.104.

[54 FR 20497, May 11, 1989]

43.107 Contract clause.

The contracting officer may insert a clause substantially the same as the clause at 52.243-7, Notification of Changes, in solicitations and contracts. The clause is available for use primarily in negotiated research and development or supply contracts for the acquisition of major weapon systems or principal subsystems. If the contract amount is expected to be less than \$1,000,000, the clause shall not be used, unless the contracting officer anticipates that situations will arise that may result in a contractor alleging that the Government has effected changes other than those identified as such in writing and signed by the contracting officer.

[48 FR 42386, Sept. 19, 1983. Redesignated at 54 FR 20497, May 11, 1989]

Subpart 43.2—Change Orders**43.201 General.**

(a) Generally, Government contracts contain a changes clause that permits the contracting officer to make unilateral changes, in designated areas, within the general scope of the contract. These are accomplished by issuing

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written change order, Form 30. A modification is not otherwise valid.

(b) The performance of a contract may be changed, extended, or interrupted by the contractor to continue beyond the limitation of funds clause.

(c) The contractor may change or amend a contract under unusual circumstances.

(1) Copies of the contract should be maintained in the contract file.

(2) Immediate action should be taken to correct the contract.

(3) The contractor should be notified of the change in the contract, including in the statement of work.

(4) The contractor should be notified of the change in the contract.

43.202 Authority.

Change orders are issued by the contracting officer. The authority is derived from the contract.

43.203 Change order procedures.

(a) Contractors are seldom permitted to change the costs of performance. Therefore, contractors submit change orders. The contractor should be notified of the change in the contract, including in the statement of work.

(b) The following costs are normally not subject to change orders:

(1) Nonrecurring costs that are performed